

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In re: The Revocation of the Licenses of
Clarke Schmidtke to Provide Adult Foster
Care

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge George A. Beck on Tuesday, August 29, 1995, at 10:00 a.m. at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, in the city of Minneapolis, Minnesota. The record closed on the date of the hearing.

Richard D. Berens, Esq., of the firm of Johnson, Berens & Wilson, 110 Downtown Plaza, Box 271, Fairmont, Minnesota 56031, appeared on behalf of the Human Services Agency of Faribault and Martin Counties. There was no appearance by or on behalf of Clarke Schmidtke, the Licensee.

This Report is a recommendation, not a final decision. The Commissioner of the Department of Human Services will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendation contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact James G. Loving, Director of Licensing, Department of Human Services, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this contested case proceeding is whether or not disciplinary action should be taken against the foster care licenses of the Licensee.

Based upon all the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Notice of and Order for Hearing dated March 28, 1995, was served by mail upon the then attorney for the Licensee, Thomas L. Skorczeski on May 17, 1995. The Notice set the hearing for July 6, 1995.

2. By a letter dated June 26, 1995, Mr. Skorczeski stated that he had forwarded the Notice to the Licensee, but was not specifically aware whether or not it had been received by Licensee.

3. By a letter dated June 26, 1995, the county Human Services Agency requested a continuance of the hearing in this matter in order to allow the Notice of and Order for Hearing to be reserved. The hearing was then continued by the Office of Administrative Hearings to August 29, 1995, at 10:00 a.m.

4. On July 18, 1995, a Notice of the continued hearing was personally served upon Marge Schmidtke at 109 East Sherman in Ceylon, Minnesota. Ex. 1, Ex. 2.

5. The Licensee has failed to submit a Notice of Appearance in this proceeding and did not appear at the hearing in this matter on August 29, 1995. He is therefore in default in this proceeding.

6. Under Minn. Rules pt. 1400.6000, the allegations contained in the Notice of and Order for Hearing are hereby taken as true and incorporated into these Findings of Fact.

7. On November 12, 1993, the Licensee was charged with a felony violation of Minn. Stat. § 609.631 for check forgery. Ex. 3.

8. On October 4, 1993, the Licensee admitted to the Martin County Sheriff's Department that he had written two \$1,500 checks and signed the name of a former resident of his foster care facility without authority to do so. Ex. 6.

9. On June 30, 1994, a district court judge found probable cause to believe that the Licensee had committed the offense of check forgery. Ex. 4.

10. On May 9, 1995, the district court ordered the criminal matter continued for a dismissal until March 13, 1996. The Order contemplates expungement provided that the Licensee makes restitution in the amount of \$3,000 and has no further violations of law prior to that time. Ex. 5.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of the Department of Human Services and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, and 245A.08.

2. The Notice of Hearing is proper and the local agency and the Department have complied with all substantive and procedural requirements of law and rule.

3. Minn. Stat. § 245A.07, subd. 3, authorizes the Commissioner of Human Services to revoke the license where the license holder fails to comply fully with applicable law or rules.

4. Under Minn. Rule 9543.3070, a license is disqualified if he has admitted to a crime of check forgery.

5. The local agency has demonstrated reasonable cause to believe that the Licensee is in violation of this rule and the Licensee has failed to show by a preponderance of the evidence that he was in full compliance with the rule.

6. The allegations of the Notice of and Order for Hearing as well as the evidence in this record demonstrate that the Licensee is in violation of the rule cited above and therefore in violation of the statute.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that disciplinary action be taken against the adult foster care licenses of Clarke Schmidtke.

Dated this 1st day of September, 1995

/s/

GEORGE A. BECK

Administrative Law Judge

Reported: Default

Notice

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.